

MEMORANDUM OF UNDERSTANDING

BETWEEN AND FOR THE

CITY OF FRESNO

AND

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
LOCAL UNION 100**

(Non-Supervisory Groups and Crafts - Unit 7)

FISCAL YEARS

2002 - 2004

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LEGEND

* * *	= deleted old language
[\$ deleted]	= section/subsection deleted
[\$§ deleted]	= two or more sections/subsections deleted
bold type	= new language

ARTICLE I

PREAMBLE

A. PURPOSE

This Memorandum of Understanding, **hereinafter MOU**, entered into between the City of Fresno, hereinafter referred to as the City, and the International Brotherhood of Electrical Workers, Local Union 100, hereinafter referred to as IBEW, has as its purpose the establishment of **wages, hours, and other** terms and conditions of employment.

B. GOVERNING LAWS

The legal relationship between the City and its employees and the City and IBEW is governed by Section 3500 *et seq.*, of the Government Code, commonly known as the Meyers-Milias-Brown Act (MMBA), and Article 19 of Chapter 2 of the Fresno Municipal Code, **hereinafter FMC**. In the event of conflict between said laws and this * * * **MOU**, said laws shall govern.

ARTICLE II

RECOGNITION, EMPLOYEE RESPONSIBILITIES AND PERFORMANCE EVALUATIONS

A. RECOGNITION OF UNIT DESCRIPTION

The non-supervisory groups and crafts unit, **hereinafter Unit**, consists of all employees holding a permanent position, as defined in * * * **FMC** Section 2-1601.1(p)(4), in one of the classes (**hereinafter collectively referred to as employee unless otherwise specified**) contained in Exhibit 9 of the Salary Resolution, listed below, provided that such * * * **Unit** may be modified from time to time in the manner designated in the * * * **FMC Sections** 2-1913 and 2-1913.2.

Air Conditioning Mechanic
Concrete Finisher
Electrician
Painter

B. UNION RECOGNITION

The City acknowledges **IBEW** as the recognized employee organization representing the Unit, and therefore, shall meet and confer in good faith promptly upon request by **IBEW**, and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on a successor MOU at least one week prior to ensuing fiscal year in order to meet the June 30 deadline specified in the City Charter. In order that the meet and confer process includes adequate time for the resolution of impasse, the City will entertain meet and confer process proposals from **IBEW** as early as March 1, 2004.

C. CITY RECOGNITION

IBEW recognizes the City Manager of the City, or such other person as may be designated in writing, as the designated representative of the City, and shall meet and confer in good faith promptly upon request by the City and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation at least one week prior to the last regular council meeting at which the City budget must be adopted for the ensuing fiscal year in order to meet the June 30 deadline specified by the City Charter.

D. **RECOGNITION OF MUTUAL OBLIGATION**

IBEW and the City recognize and acknowledge their mutual obligation and responsibility to effectuate the purposes set forth in, and to adhere to the conditions and clauses set forth in this MOU.

E. **STRIKES AND LOCKOUT**

1. No lockout of employees shall be instituted by the City during the term of this * * * **MOU**.
2. No strikes of City employees shall be caused, instigated, encouraged, condoned, participated in, or honored by IBEW during the term of this * * * **MOU**.

F. **UNILATERAL ACTION**

In the event the meet and confer process for a successor MOU results in an impasse, as defined in the FMC, the City shall not take unilateral action regarding wages, hours, and other terms and conditions of employment prior to the completion of the impasse procedure outlined in the FMC.

G. **EMPLOYEE RESPONSIBILITIES**

All employees in this * * * **Unit** acknowledge that the City shall consider the positions and proposals of the IBEW as the meet and confer positions of all employees, individually and collectively, in said * * * **Unit**.

H. **EMPLOYEE PERFORMANCE EVALUATIONS**

1. Each City * * * **department** shall have the right, at a minimum, to conduct annual employee performance appraisals on a department-wide basis for all employees at the discretion of the appointing authority.
2. Supervisors shall complete quarterly evaluations on probationary employees. Two (2) evaluations shall be conducted during the first six (6) months and two (2) during the second six (6) months.
3. An employee who disagrees with a performance evaluation may within ten (10) calendar days from the date of receipt of the performance evaluation:
 - a. Write a rebuttal statement for attachment to the performance evaluation form; and/or

- b. Request further review with the supervisor of the reviewer, but in no case higher than the department head.
- 4. Employee performance evaluations are not subject to the grievance procedure.

[§§ deleted & moved]

ARTICLE III

DEDUCTIONS

A. AGENCY SHOP

1. The City shall deduct the dues or benefit premiums, or both, upon proper authorization by an employee who desires a dues deduction in this * * * **Unit**.
2. If an employee in this * * * **Unit** desires the City to deduct dues or benefit premiums from * * * **the employee's** paycheck, a deduction authorization shall be made by * * * **the employee** upon a Dues Deduction Authorization Card in the form as specified in * * * **FMC** Section 2-1919.
3. Pursuant to and in accordance with Section 3502.5 of the Government Code and all the provisions therein, the City and IBEW agree that all employees in positions in a class in this * * * **Unit** shall be required as a condition of continued employment to join IBEW or pay an agency shop fee in lieu thereof in the amount of the standard initiation fee, periodic dues, and general assessments of IBEW. The agency shop provision shall expire three years from the effective date of this agreement, and the City shall be under no further obligation to collect an agency shop fee on behalf of IBEW. IBEW shall not require a non-member of IBEW to make any payment to the Committee on Political Action, nor shall IBEW include as a part of the agency shop fee an amount to be used for political purposes.
4. In the event an employee covered hereunder does not, within thirty (30) calendar days of receipt of notice from IBEW, authorize deduction of either IBEW dues, and general assessments of IBEW, or an agency shop fee from * * * **the employee's** paycheck and does not regularly make such payment directly to IBEW, IBEW shall provide a certification to the City of such failure. Prior to such certification, IBEW shall notify the employee of its intent to provide certification to the City. Such failure by an employee shall constitute grounds for termination by the appointing authority.
5. Exceptions to Subsection 3. above shall be as provided in Section 3502.5(a) of the Government Code. An employee claiming exemption shall provide proof satisfactory to the City of such exemption, and shall contribute an amount equal to the agency shop fee to either the United Way, CHAD, or the Red Cross. Proof of such contribution shall be required monthly. These provisions may be rescinded pursuant to the procedures set forth in Government Code Section 3502.5(b).

6. Any disputes regarding the interpretation of this Section shall be resolved through the grievance procedure unless another established appeal procedure exists.

B. EXCEPTIONS TO DUES DEDUCTION AUTHORIZATION CARD

The member's earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorization. When a member is in a nonpay status for an entire pay period, no dues deduction shall be made from future earnings to cover that pay period, nor may the member be required to deposit, nor may * * * **the member** deposit with the **City** Controller, the amount which would have been deducted if the member had been in a pay status during that period. In the case of a member who is in a nonpay status during only a part of the pay period and whose salary is insufficient to cover other legal and required deductions, no dues deduction or deposit shall be made.

C. DUES CHECK-OFF

Rules governing dues check-off are set forth in **FMC** Section 2-1919 * * *, as amended in accordance with * * * **MOU Article III, Section A., Subsection 3.**

ARTICLE IV

GRIEVANCES

A. GRIEVANCE PROCEDURE

1. A grievance is a dispute concerning the interpretation or application of any existing City rule or regulation governing personnel practices or working conditions, including this * * * **MOU**. A grievance involves the claimed misapplication or misinterpretation of a rule or regulation relating to an existing right or duty. This procedure shall not apply to any dispute for which there is another established resolution procedure, including but not limited to, appeal to the Civil Service Board, Retirement Board, or unfair employee-employer relations charge fact-finding procedure.
2. A written grievance must set forth the rule or regulation claimed to have been violated, describe the specific incident or circumstances of the alleged violation, and specify the remedy sought. Any dispute between the parties as to the grievability of an issue or as to whether the requirements of this procedure have been met shall be presented to the Grievance Advisory Committee. The Committee shall rule on the dispute before proceeding with the hearing.
3. IBEW may represent employees covered by this * * * **MOU** on grievances under the grievance procedure.
4. The procedure and sequence in filing and processing a grievance shall be as follows:
 - a. The * * * **grievant and/or IBEW** representative shall discuss the grievance with the * * * **grievant's** immediate supervisor before a written grievance may be filed.
 - (1) If the grievance is not settled through this discussion, it either may be discussed with the next higher supervisor or a written grievance may be filed with the * * * **grievant's** immediate supervisor. A written grievance must be filed within twenty (20) calendar days from the time the employee becomes aware or should have become aware of the issue or incident giving rise to the problem.

- (2) Upon receipt of a written grievance, the immediate supervisor shall give the * * * **grievant** a written reply within ten (10) calendar days.
- b. Should the * * * **grievant** not be satisfied with the answer received from the immediate supervisor, the * * * **grievant** may within ten (10) calendar days file an appeal with the * * * **department head**. The * * * **department head** shall have fourteen (14) calendar days after receipt of the appeal to review the matter, investigate and provide a written answer to the appeal, explaining clearly the decision or proposed action and reasons thereof. The * * * **department head** may confer with the * * * **grievant** and appropriate supervisors in an attempt to bring about a harmonious solution.
- c. The City and IBEW may mutually agree to waive steps 1 and 2 and proceed directly to hearing by the Committee when the issue is one in which the * * * **grievant's** supervisor or * * * **department head** has no jurisdiction.
- (1) If the * * * **grievant** is not satisfied with the decision of the * * * **department head**, the * * * **grievant** may within seven (7) calendar days after receipt of the written reply, file a request for a review of the * * * **department head's** decision to the Grievance Advisory Committee. The review/appeal to the Grievance Advisory Committee shall be reviewed and approved by the IBEW Business Agent or designee before it is delivered to the Labor Relations Division.
- (2) The City and IBEW may agree to seek resolution of the grievance through mediation using the services of the State Mediation and Conciliation Service, prior to hearing by the Grievance Advisory Committee. Time limits for processing of grievances are automatically extended for so long as mediation is in process.
- (3) From the date a grievance otherwise meeting all criteria for the filing and processing of a grievance reaches the Labor Relations office, the Grievance Advisory Committee shall be convened within thirty (30) calendar days in order to hear the grievance.
- (4) All time limits herein may be extended by mutual agreement of the parties.

- (5) The Grievance Advisory Committee shall conduct a hearing and make a recommendation to the City Manager within thirty (30) calendar days of their last meeting.
 - d. The City Manager shall review the decision of the * * * **department head** and recommendations of the Grievance Advisory Committee and shall render a written decision to the * * * **grievant** within twenty (20) calendar days after receipt from the Grievance Advisory Committee.
 - e. Failure of the * * * **grievant** to file an appeal within the specified time limit for any step of the procedure shall constitute abandonment of the grievance. Failure of the responsible * * * **supervisor** or official of the City to render a decision within the specified time limit established by this procedure shall automatically move the grievance to the next higher level for action, without action required of the * * * **grievant**. Failure of the City Manager to render a decision within the specified time limit will default to the Grievance Advisory Committee or neutral decision.
5. The Grievance Advisory Committee shall be comprised of three (3) members: One selected by IBEW, one selected by the City, and the Chairperson. The Chairperson may be chosen either by mutual agreement of IBEW and the City, or by the “strike” method from a list of neutrals provided by the State Mediation and Conciliation Service. If the Chairperson is selected by the strike method from the list of neutrals provided by the State Mediation and Conciliation Service, then the Grievance Advisory Committee shall be comprised exclusively of the selected neutral.
- a. The neutral and Grievance Advisory Committee shall be bound by the language of the * * * **MOU**, City Administrative Orders, ordinances, rules and regulations, and department rules and regulations consistent therewith in considering any issue properly before them. The neutral and Grievance Advisory Committee shall be expressly confined to the precise issues submitted and shall have no authority to consider any other issue not so submitted. The neutral and Grievance Committee may not recommend changes in established wages or benefits, nor recommend the payment of back wages or benefits to a date prior to the date * * * **of the incident**.
 - b. Fees and expenses of the neutral shall be paid half by the City and half by IBEW; provided, however, that the Committee may recommend that the City or IBEW pay the total of such fees and expenses should it find that, but for the unreasonableness of that

party's posture, the convening of the Committee would not have been necessary. The City and IBEW shall select a chairperson within twenty (20) calendar days of the receipt of a grievance requesting review by a Grievance Advisory Committee by the Labor Relations Division.

ARTICLE V

COMPENSATION AND BENEFITS

A. * * * SALARIES

1. Effective * * * **July 1, 2002**, monthly salaries shall be increased by **three percent (3%)** * * * , as reflected on Exhibit I, **Table I**.
2. Effective * * * **on the first pay period ninety (90) days prior to the date this MOU is approved by Council**, monthly salaries shall be increased by **three percent (3%)** * * * , as reflected on Exhibit I, **Table II**.
3. Effective * * * **July 1, 2003**, monthly salaries shall be increased by **three percent (3%)** * * * , as reflected on Exhibit I, **Table III**.

[§§ moved]

B. OVERTIME * * * AND PREMIUM PAY

1. Overtime:

Work performed in excess of eight (8) hours a day or forty (40) hours a week, or on an employee's first scheduled day off in a week shall be compensated at the rate of one and one half (1½) the straight time hourly rate. Work performed on an employee's second scheduled day off in a week shall be compensated at two (2) times the straight time hourly rate. There shall be no pyramiding of overtime or hazardous duty premium rates and two times the straight time rate of pay shall be the maximum compensation for any hours worked.

[§§ deleted]

2. Premium Pay:

- a. Hazardous Duty - Electricians working on poles, towers, trees, or on any equipment at a height of fifty (50) feet or more shall be compensated at two (2) times the straight time rate for the actual hours worked at such heights. Work performed in trees at a height of forty-nine (49) feet or less shall be compensated at one and one-half the straight time rate for actual hours worked. Work performed on poles, towers, trees, or on any equipment **at a height of fifty (50) feet or more, or on trees at any height** on an employee's scheduled

days off shall be compensated at two (2) times the straight time rate for the actual hours worked.

Painters working at a height of 30 feet or more, or as a spray operator, sandblaster or pipe painter, shall receive an additional **four percent** (4%) of the straight time rate of pay for the actual hours worked.

- b. Call Back Pay - An employee called in to work after completing * * * **the employee's** regular shift and having left the property, or on a day * * * **the employee** was not scheduled to work, will be paid a minimum of two (2) hours at time and one-half * * * **the employee's** base rate of pay **commencing from the time the employee receives the call and ending when the employee returns home, with a one-half hour maximum travel time.** An employee called in to work on the **employee's** second day off will be paid a minimum of two (2) hours at two (2) times the base hourly rate of pay **commencing from the time the employee receives the call and ending when the employee returns home, with a one-half hour maximum travel time.**

In the event * * * an employee receives a second or subsequent call prior to completing * * * a two hour * * * call-back, the employee * * * shall be * * * compensated at the applicable rate of pay for the time actually spent correcting the problem(s), which exceeds the two (2) hour minimum. * * * However, an employee shall be compensated the two (2) hour minimum * * * every time the employee is called in and required to leave * * * the employee's residence and report to work.

*** * * Permanent employees occupying the classes of Electrician or Air Conditioning Mechanic who are assigned by Management to perform diagnostic and/or corrective work from an off-site location via lap-top computer and modem, or telephone, after having completed * * * their regular shift or on a day * * * the employee was not scheduled to work, will be paid a minimum of two (2) hours at time and one-half of * * * their base rate of pay, * * * and on their second day off will be paid a minimum of two (2) hours at two (2) times the base rate of pay commencing from the time the employee receives the call. In the event * * * an employee receives a second or subsequent call prior to completing the assigned * * * diagnostic and/or corrective work within the two (2) hour call-back minimum, the employee * * * shall * * * be compensated * * * at the applicable rate of pay for the time actually spent**

correcting the problem(s), which exceeds the two (2) hour minimum.

- c. Standby Pay - Employees * * * may be assigned to * * * **standby** on a rotating basis. An employee assigned to * * * **standby** will be required to carry a pager, and shall not consume alcohol during the * * * **standby** period. Employees on * * * **standby** are required to respond and shall report to their division/**section** or the work site within one hour of being contacted. **Standby * * * premium pay** for work week nights, from the end of the shift on the first day to the beginning of the shift on the following day, shall be \$16.00 for each night. **Standby * * * premium pay** for an employee's scheduled days off, from the end of the last shift of the week to the beginning of the first shift of the following week, shall be \$72.00.

* * * **Time** spent on stand by shall not be considered hours worked, and that * * * **standby premium pay** shall not be included in the calculation of an employee's regular rate of pay under the Fair Labor Standards Act.

In the event an employee on * * * **standby** is required to and does report to the work site, * * * **the employee** will be paid as set forth in * * * **Subsection b.** above, in addition to the * * * **standby** pay.

- d. Night Shift * * * - Each employee * * * who is regularly assigned/scheduled (including as is provided for in **Article V, Section F. * * * Subsection 7.**) to work a "night shift" between the hours of 5:00 p.m. and 8:00 a.m. shall receive night shift premium pay in addition to * * * **the employee's** base rate of pay. If one-half ($\frac{1}{2}$) or more of an employee's regularly scheduled shift hours fall between 5:00 p.m. and midnight, the night shift premium pay will be \$1.00 per hour for all actual hours worked that shift. If one-half ($\frac{1}{2}$) or more of an employee's regularly scheduled shift hours fall between midnight and 8:00 a.m., the night shift premium pay will be \$1.50 per hour for all actual hours worked that shift.
- e. Show Up Time - An employee who reports to work at the regular starting time and for whom no work is provided shall be paid for two (2) hours, unless * * * **the employee** was notified one (1) or more hour(s) prior to starting time not to report.

An employee who reports to work and for whom less than eight (8) hours work is provided shall be paid only for actual hours worked that shift.

- f. Temporary Assignment Pay - * * * **Employees** who are assigned leadworker functions and responsibilities shall receive an additional * * * **ten percent (10%)** above their applicable base rate of pay for the actual time spent performing leadworker functions and responsibilities. Actual hours worked performing leadworker functions and responsibilities in excess of eight (8) hours in a day, or forty (40) hours in a workweek, shall be paid at one and one-half (1 ½) times the applicable classes' leadworker temporary assignment rate of pay. Actual hours worked performing leadworker functions on an employee's first day off in a workweek shall be compensated at one and one-half (1 ½) times the applicable classes' leadworker temporary assignment rate of pay, and for a second day off in a workweek at two (2) times the applicable classes leadworker temporary assignment rate of pay. Employees may not elect to accrue compensatory time off in lieu of cash payment for actual hours worked as a leadworker. Performing leadworker functions and responsibilities is a temporary assignment, not a promotion, which is determined solely by management.

C. **FRESNO CITY EMPLOYEES HEALTH AND WELFARE TRUST**

The City and IBEW agree that the Fresno City Employees Health and Welfare Trust has the sole authority to determine the benefits that will be provided during the term of this * * * **MOU**. The sole responsibility of the City under this clause is to provide a set dollar amount to be contributed to the Trust on behalf of the employees represented by IBEW. The City will contribute only the dollar amount adopted by the Fresno City Employees Health and Welfare Trust for employee benefits during the term of this * * * **MOU**, but * * * not to exceed * * * **\$500** per month per employee. In the event the premium established by the Trust during the term of this * * * **MOU** is greater than the City's agreed maximum contribution, the employee will be required to contribute the amount necessary to make up the difference through payroll deductions. **In the event the City agrees to contribute an amount higher than the * * * \$500 established herein on behalf of any other recognized bargaining unit whose members participate in the Fresno City Employees Health and Welfare Trust, the City agrees that it will reopen the meet and confer process on this item upon request by IBEW solely in fiscal years 2002 and 2003. This meet and confer is not subject to FMC 2-1916.**

D. **LEAVES**

1. Holidays and Birthday Leave:
- a. Except as may be modified in this section, Holidays shall be governed by Fresno Municipal Code Section 2-1513:

- ! January 1
- ! The third Monday in January
- ! The third Monday in February
- ! The last Monday in May
- ! July 4
- ! The first Monday in September
- ! November 11
- ! Thanksgiving Day in November
- ! The Friday after Thanksgiving Day in November
- ! December 25
- ! Employee's Birthday
- ! Two Personal Business Days (8 hours credited to holiday balance on July 1 and 8 hours credited on January 1)
- ! Any day or part of a day declared by the Council, by ordinance or resolution, to be a holiday.

- b. If January 1 * * *, July 4 * * *, November 11 * * *, or December 25 * * * falls upon a Sunday, **then** the Monday following will be observed as the holiday, in lieu of Sunday.
- c. Work performed on a holiday or an employee's birthday shall be compensated at the employee's straight time rate of pay, for actual hours worked, except as provided for in Article V * * *, **Section B for Call Back Premium Pay, and Show Up Time.**
- d. If * * * **an** employee * * * is required to and does work on * * * **the employee's** birthday or paid holiday, or in the event a paid holiday or an employee's birthday falls on a Saturday, eight hours of paid leave shall be added to the employee's holiday leave balance.
- e. Holiday leave may be taken in increments of less than eight (8) hours.
- f. Employees * * * may request payment for any holiday leave balance.
- g. An employee in an unpaid status, i.e., Leave Without Pay or an unpaid suspension, or on injury pay immediately preceding or following a holiday shall not be credited for such holiday.

2. **Sick Leave:**

- a. **Effective the first calendar month following Council approval of this MOU, * * * employees shall accrue sick leave at the rate of eight (8) hours * * * for each completed calendar month of employment, with unlimited accrual. * * * Except for**

Administrative Order 2-20, Sick Leave Policy, which shall no longer apply, the FMC, City administrative orders, * * * policies, procedures, rules and regulations concerning sick leave usage and administration shall continue to apply.

- b. * * * **Employees** may be allowed up to * * * **forty-eight (48)** hours of accrued sick leave per fiscal year for Family Sick Leave, to care for members of their immediate family * * *. Family Sick Leave may be used to actually care for or to arrange for the care of family members who are ill and cannot care for themselves, or to take family members to routine medical or dental appointments. Employees are encouraged to schedule routine medical and/or dental appointments outside of regular work hours when possible. Use of Family Sick Leave shall be authorized and recorded by a * * * **department head** or designee.

3. **Vacation:**

Permanently appointed employees shall receive vacation accumulation in accordance with * * * **FMC** Section 2-1510; except, however, employees who have been continuously employed by the City for five years or more, but have less than 10 years of such employment, shall accumulate vacation leave with pay at the rate of eight and two-thirds hours for each completed calendar month of employment (**refer to table below**).

Years of Continuous Employment	Accrual Rate (hrs./mo.)
1 - 4 years	8
5 - 9 years	8.667
10 - 19 years	10
More than 20 years	13.334

E. **WORKERS' COMPENSATION**

1. Notwithstanding the provisions of FMC Section 2-1515, an employee * * * who suffers an injury in the course and scope of * * * City employment shall receive 85 percent of * * * full wages or salary from the City, beginning on the

fourth day of such absence, unless hospitalized on the first day for at least 24 hours, or unless the absence exceeds 14 days, in which case, the employee shall receive the pay provided in this * * * **Section** from the first day. Except for the provision of full pay and its starting date (as modified herein), the remaining provisions of FMC Section 2-1515 shall apply.

2. At the employee's option, in the event pay from the City is not provided during the first three days of absence due to injury, the employee may take sick leave for that period.

[§§ moved]

F. HOURS OF WORK **AND SCHEDULES**

1. The work week * * * **for the City** begins on Monday at 12:01 a.m. and ends the following Sunday at midnight.
2. The work day, * * * **starts at 12:01 a.m. and ends 24 hours later at midnight.**
3. The normal work schedule shall be forty (40) hours per week consisting of five (5) days of eight (8) hours each, exclusive of a * * * **meal** period. This is not intended to guarantee an employee forty (40) hours work each week. The City may release employees without pay due to reasons including, but not limited to, inclement weather or lack of work.
4. Work schedules are established by individual departments/divisions based upon the need to provide service to the public, and/or other City departments * * * .
5. Employees shall receive a one (1) or one-half (½) hour meal period, without pay, each day and a fifteen (15) minute paid rest period during the first half of the work day and a second fifteen (15) minute paid rest period during the second half of the work day * * * . * * * **Meal periods** and rest periods are scheduled by departments/divisions according to the needs of the department/division. The City retains the exclusive right to control the use of City-paid break periods, * * * **and exclusive control of** the use of City vehicles * * * **at all times.**
6. Employees whose duties require it shall be allowed a reasonable amount of time for a personal clean-up period prior to the end of each work shift.
7. The City may, with seventy-two (72)-hour notice to the employee, temporarily modify the employee's working hours due to backlog/workload concerns.

This provision is not intended to address working hours modified as a result of daylight savings hours, overtime or other established work hour changes to meet the needs of the City. This temporary modification shall not be less than one (1) week nor more than one (1) month, unless mutually agreed to by the parties. In the event of a bonafide emergency, as determined by management, shorter notification shall be allowed. Emergency modification of an employee's work schedule shall be for a period not to exceed one week.

[§§ moved]

G. SENIORITY

1. In accordance with FMC Sections 2-1671 and 2-1672, seniority shall be the determining factor in lay-offs and recalls (reinstatement).
2. If two or more employees were employed on the same date, in the same class, then placement on the eligible list shall be used to determine seniority order.
3. Seniority will continue to accrue during an approved leave without pay taken under the Family Rights Act * * * **and Family Medical Leave Act.**

H. * * * TRANSFERS

1. A permanent employee may request consideration for transfer to vacant positions in the same class by submitting a written request to the Director of Personnel Services. When vacancies occur in the class, names of employees requesting transfer shall be submitted for consideration prior to the certification of names from an eligible list. Transfers between departments require the approval of both appointing authorities. Approval of the transfer shall not be unreasonably withheld by the appointing authority in the department from which transfer is sought.
2. Employees who wish to be considered for transfer to another position in the same class within their department may do so by submitting a written request to their appointing authority. The appointing authority shall give first consideration to an employee who requests such transfer.
3. *** * * Employees * * * shall be subject to all policies, procedures, rules and regulations, not inconsistent with this MOU, for the department/division/section/unit to which they have transferred.**

[§§ deleted & moved]

ARTICLE VI

*** * * FEDERAL DRUG POLICY (FEDERAL OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT)**

[\$ moved]

Policy

1. * * * **A** policy which summarizes the federal regulations required by the Federal Omnibus Transportation Employee Testing Act * * * **is** distributed to all affected employees during training and orientation.
2. The parties have agreed that the Medical Review Officer (MRO), the Substance Abuse Professional (SAP) and the rehabilitation treatment program and facilities used for this purpose will be those designated by the respective employees health and welfare trusts and that employees referred to these services as a result of the application of this policy will be tracked separately and the charges billed directly to the City through the Risk/Safety Manager. The Risk/Safety Manager will be responsible for receiving all information related to the implementation of this policy and directing the applicable disciplinary action in coordination with the Labor Relations Manager.
3. * * * **An** observer not subject to random testing under this policy, designated by one of the affected labor organizations, will be invited by the Manager of the Risk/Safety Division to be present at the time the random list is generated.
4. * * * **A** Substance Dependency Advisory Committee **shall be formed and shall meet at the request of any member** to review the impact, modification or repeal of the **Federal** Omnibus Transportation Employee Testing Act * * * and make recommendations to the City Manager on all matters relevant to the implementation of this policy. Half of the members of said committee shall be appointed by the City and the other half shall be appointed by those recognized employee organizations subject either to the regulations promulgated by the **Federal Transit Administration (FTA)**, or the Federal Highway Administration (FHWA). * * *
5. Any disciplinary action taken by the City as a result of this policy will be subject to the applicable provisions of current * * * **MOUs**, Administrative Orders, and * * * **FMC** concerning representation and hearing appeals process. Among the factors to be considered in determining the appropriate disciplinary action include the level of the offense, the nature and requirements of the work, length of employment, current job performance, and history of past disciplinary action. Pursuant to the provisions of FMC-1905 (a)(5), the City reserves the exclusive right to determine the level of disciplinary action, utilizing the following guidelines:

- a. An employee who registers an alcohol breath level between .02 and .039 as a result of a random test will be immediately removed from the safety sensitive position for a period of eight (8) hours (FTA) or twenty-four (24) hours (FHWA) and placed on administrative leave with pay for the duration of the affected scheduled shift. An employee thus removed, may be subject to appropriate disciplinary action up to and including discharge for each such offense.
- b. An employee who registers an alcohol breath level of .04 or greater, or is determined to have a positive drug test as a result of reasonable suspicion, random selection, or post accident testing, may be referred to a Substance Abuse Professional (SAP) for evaluation. Any employee permitted to undergo rehabilitation treatment as a condition of continued employment, must complete the treatment modality/program recommended by the SAP prior to resuming a safety sensitive function and participate in any follow-up protocol recommended by the SAP. The period of absence to complete the rehabilitation program will be charged to any available sick leave, vacation or leave without pay, at the employee's option. It is the employee's responsibility to authorize and direct the SAP/MRO to keep the City informed of the progress of treatment. An employee who fails to inform the City concerning the status of treatment refuses to undergo recommended treatment, does not complete the recommended program and follow-up protocol, or refuses to return to work after being released from rehabilitation treatment, will be subject to disciplinary action up to and including discharge.
- c. An employee who registers an alcohol breath level of .04 or greater, or is determined to have a positive drug test as a result of random selection testing, may be subject to disciplinary action up to and including discharge, and be subject to the provisions of any applicable Department Standing Order, policy or procedure.
- d. An employee who registers an alcohol breath level of .02 or greater, or is determined to have a positive drug test as a result of reasonable cause, post accident testing, mandatory follow-up testing, or refuses to submit to a drug or alcohol test, may be subject to disciplinary action up to and including discharge.

Procedure for Random Testing

1. The Risk/Safety Manager selects a date and time for testing and requests the designated labor organization observer to attend. The date is usually selected 24 hours prior to the creation of the list of names for actual testing. In order to facilitate testing, the Risk/Safety Manager will notify the designated testing facility of the date and time of expected testing so that adequate staffing needs are met.

2. At the appointed time of list creation, the Risk/Safety Manager will request the designated labor organization observer to select a random number between 1-10.
3. Based upon the number selected, the computer will generate lists until that numbered list is reached. That list will be used for testing and all others will be discarded. Both the Risk/Safety Manager and the observer will sign the selected list to verify its authenticity as being the list selected.
4. The Risk/Safety Manager will review the list and identify the physical location of all employees selected.
5. The Risk/Safety Manager contacts those * * * **departments/divisions** which have effected employees and advises them that they have employees who require drug/alcohol testing.
6. The * * * **departments/divisions** are responsible for notifying selected employees that they have been chosen for random testing. Only those employees actually on shift or expected to report to work within the ensuing * * * **24-hour** period will be required to test. Employees who are absent from the job site at the time of testing will not be required to report for testing. In those cases where an employee is not selected for testing, the next name on the generated list will be considered for testing.
7. * * * **Departments/divisions** will notify the Risk/Safety Manager of the availability of selected employees. The Risk/Safety Manager will note this information and provide a notation in the file if an employee is bypassed.
8. The Risk/Safety Manager shall maintain a separate file for each date that testing is performed. The file shall contain the original list from which the names were used to identify employees to be tested.
9. The Risk/Safety Manager shall place a copy of the completed drug testing report into each corresponding file for that specific date of testing.
10. Upon receipt of information from the MRO that an employee has tested positive for drugs or alcohol, the Risk/Safety Manager shall advise the employee's * * * **department/divisions** that the employee must be precluded from performing in a safety sensitive capacity.
11. The Risk/Safety Manager shall contact the Substance Abuse Professional (**SAP**) and shall advise the employee of a date and time for referral.
12. Upon receipt of the recommendation of the SAP, the Risk/Safety Manager shall confer with the employee and the * * * **department/division head** for the purpose

of incorporating the recommendation of the SAP into a Last Chance Agreement. The purpose of the Last Chance Agreement is to allow the employee to return to work (upon testing negative for drugs and alcohol) with the understanding that the recommendation of the SAP be completed and that any future positive test will result in termination without appeal. Last Chance Agreements do not apply to members of FPOA. As required by federal law, employees who have tested positive and who have returned to work, will still be subject to random selection for testing and will be subject to six additional tests for drugs and alcohol during the subsequent year.

ARTICLE VII

HEADINGS, SAVING CLAUSE AND FULL UNDERSTANDING

A. **Headings:**

*** **MOU** article, provision, and paragraph headings (includes exhibits, addendums, attachments, **agreements** * * *) contained herein are solely for the purpose of convenience, and shall not effect the construction or interpretation of any of the language of this * * * **MOU**.

B. **Saving Clause:**

In the event any Article, Section, or portion of this * * * **MOU** should be held invalid and unenforceable in any court of competent jurisdiction, such decision shall apply only to the specific Article, Section, or portion thereof specified in the court's decision, and upon issuance of such a decision, the City and IBEW agree immediately to meet and confer upon a substitute for the invalidated Article, Section, or portion thereof.

C. **Full Understanding:**

It is intended that this * * * **MOU** sets forth the full and entire understanding of the parties, and any previous understanding or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded and terminated in their entirety. With respect to * * * **agreements**, any not attached to this * * * **MOU** are hereby terminated in their entirety. * * * **Agreements** attached to this * * * **MOU** shall continue in force subject to the terms contained therein, or in the absence of specified terms the * * * **agreements** shall terminate upon the expiration of this * * * **MOU**. * * * **Agreements** entered into during the term of the * * * **MOU** shall continue in force subject to the terms and conditions set forth in each * * * **agreement**.

ARTICLE VIII

TERMINATION

The provisions of this MOU shall be in full force and effect from July 1, 2001, to June 30, 2004, subject to the Sections (A., B., and C.) below.

- A. This * * * **MOU** shall become effective only after ratification by the members of IBEW, followed by City Council approval and the expiration of the waiting period for the Mayor's action provided in Charter sections 605 and 609, and shall remain in full force and effect through June 30, **2004**.
- B. During the life of this * * * **MOU**, should either party desire to modify its terms or to meet and confer as to matters within the scope of representation not addressed in this * * * **MOU**, the party requesting such modification shall request in writing to meet and confer on the item(s), which item(s) shall be specified in writing.
- C. During the life of this * * * **MOU**, either party may refuse any request by the other to meet and confer without explanation if the item is directly considered and specifically addressed herein; or if the specific item was included in a written proposal from the party making the request during the meet and confer process which led to this * * * **MOU**. **It is further agreed; however, that this Section shall not prohibit the City from requesting to meet and confer on changes to federal or state * * * statutes, * * * in which case the request to meet and confer shall not be refused.**

IN WITNESS WHEREOF, the parties hereto set their hands this 28th day of January
2003.

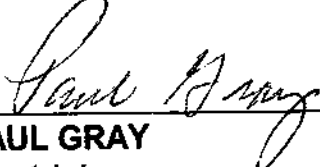
**FOR INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 100:**



LARRY KELLERHALS
Business Agent



TODD EISCHEN
Electrician



PAUL GRAY
Electrician



MIKE OAKLAND
Electrician

FOR THE CITY OF FRESNO:



JORGE C. AGUIÑIGA
Labor Relations Manager



FRED MOMEN
Supervising Professional Engineer



LORI M. NAJERA
Senior Human Resources Analyst

**APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE**
BY: Victoria Parks Tuttle
Deputy City Attorney

EXHIBIT I

Non-Supervisory Groups and Crafts - Unit 7

TABLE I Non-Supervisory Groups and Crafts - Unit 7 Salaries Salaries - Effective July 1, 2002 to November 11, 2002	
CLASS TITLE	SALARY
Air Conditioning Mechanic	4877
Concrete Finisher	4253
Electrician	4410
Painter	3874

TABLE II Non-Supervisory Groups and Crafts - Unit 7 Salaries - Effective November 11, 2002 to July 1, 2003	
CLASS TITLE	SALARY
Air Conditioning Mechanic	5024
Concrete Finisher	4381
Electrician	4543
Painter	3991

TABLE III Non-Supervisory Groups and Crafts - Unit 7 Salaries - Effective July 1, 2003	
CLASS TITLE	SALARY
Air Conditioning Mechanic	5175
Concrete Finisher	4513
Electrician	4680
Painter	4111